



# Choctaw Nation of Oklahoma

*Historic Preservation*

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Comments on WT Docket No. 16-421

April 7, 2017

The Choctaw Nation of Oklahoma values its government-to-government relationship with the Federal Communications Commission. On a day-to-day basis, we honor this relationship by reviewing communications tower construction projects under the National Historic Preservation Act (NHPA). This is done through the Tower Construction Notification System (TCNS), created by the FCC, with the input of both Tribes and Industry. From our perspective, this is perhaps the most efficient system for consultation under NHPA in existence. It is working quite well.

Since 2014, the Choctaw Nation has reviewed 1,318 projects in our 9 state area of historic interest through the TCNS system. While each of these projects builds important infrastructure, they also have the potential for irreparably damaging the human remains, sacred sites, and historic properties of our ancestors. Far more than bones and stones, these sites are at the very core of the culture and identity of our more than 200,000 Tribal citizens. Last year, we reviewed a project through the TCNS system that would have adversely affected the Choctaw Academy historic site in Kentucky. This site is connected to our treaties with the United States government; it was the home and place of education for dozens of our Tribal leaders from the last century, and has been on the National Register of Historic Places since 1972. Despite all of this, the Choctaw Academy was overlooked by the archaeologists who conducted the historic properties survey for the tower. Choctaw Nation's involvement brought this issue to light. We worked with the FCC and applicant to change the project design in such a way that the tower could still be constructed, but with minimal impact to this significant historic site (See Letter from Gary D. Batton, Chief of the Choctaw Nation dated February 28, 2017).

In the Commission's "Fact Sheet: 2016 Broadband Progress Report Chairman's Draft" from January 7, 2016 there are a number of interesting findings that are relevant to this specific docket.

First, the conclusion: *While the nation continues to make progress in broadband deployment, advanced telecommunications is not being deployed in a reasonable and timely fashion to all Americans.*

According to the fact sheet:

*Approximately 34 million Americans still lack access to fixed broadband at the FCC's benchmark speed of 25 Mbps for downloads, 3 Mbps for uploads.*

*A persistent urban-rural digital divide has left 39 percent of the rural population without access to fixed broadband, by comparison, only 4 percent living in urban areas lack access while 10 percent lack access nationwide*

*41 percent of Tribal Lands residents lack access...*

Per the WT Docket No. 16-421 at point I. A. *Technological Developments*. We find it shocking that the tribes are considered to be a hindrance and barrier to technological developments (see Sprint Corporation comments on the docket from March 8, 2017). We have consistently worked toward positive outcomes with the FCC, Tribes, and Industry to promote technological progress which is beneficial to all citizens of the United States.

B. *Federal Statutory and Regulatory Framework*. We ask FCC to continue to enforce the regulations that protect historic properties under NEPA and the NHPA. The definition of *undertaking* is clear in the regulations and should not be changed. The WIA, CTIA, and Sprint Corporation asks for relief from fees for small cell deployment and DAS along with the leeway to bypass the National Historic Preservation Act (NHPA) by either changing or ignoring the definition of an “undertaking” under the 36 CFR Part 800 regulations; Sprint states in its comments, “In the last decade, Sprint has spent millions of dollars on environmental review fees and tribal historic consultation fees, and not in a single instance has Sprint recovered a determination that its antenna deployment would have a significant environmental impact under NEPA or that it would have an adverse effect on an Historic Property protected by the NHPA.”

Isn't this a *good* thing? The very reason that Sprint can make this statement is that the Tower Construction Notification System (TCNS) and the involvement of tribes are actually working to protect historic properties! On many occasions tribes have responded to delegated contractors and consultants that towers would have an effect on a historic property of significance to them...and helped the company find an appropriate location for the tower to be moved *without any effects to historic properties*. If this partnership did not exist, the wireless industry would have had numerous delays dealing with inadvertent discoveries and very costly archaeological mitigation efforts.

WIA, CTIA, and Sprint Corporation argue that a small cell pole stuck in the ground or right-of-way (or a parking lot) should simply be cleared because it is in a previously disturbed context. However, there are numerous examples across the United States of significant historic properties and cemeteries that have been encountered in what was considered to be previously disturbed contexts (African Burial Ground, now a National Monument in New York City, the Freedman's Cemetery in Dallas, Texas, the Dutch Lovelace Tavern foundation and a 18<sup>th</sup> century cistern in Lower Manhattan, to name only a few). These examples underscore that simply stating that there would be “no effect” to historic properties because the ground was previously disturbed does not necessarily make it so.

We also believe that the roles of the municipalities, states, state DOTs, and counties should be more clearly defined regarding rights-of-ways and the fees charged. However, many state transportation rights-of-ways (and utility rights-of-ways) were excluded from Section 106 and NEPA reviews in the past (for the sake of argument let's compare the Houston stadium highlighted by Sprint Corporation as having no need for clearance under the NHPA). What has occurred recently is that a large number of

archeological sites, cemeteries, and significant historic properties have been encountered during highway expansions and widenings; delaying the construction projects and costing much more than what it would have originally cost to actually “clear” the project under NEPA and/or Section 106. These compliance efforts, if they had been carried out in the past, would have at the least given the state DOTs the ability to reroute and avoid impacts to historic properties and thereby save money and unnecessary delays.

### *C. Local Governments’ Review of Siting Applications*

We agree that fees should be fair and reasonable across the board with all parties. We look forward to working toward a solution with FCC, Tribes, and Industry in regard to fees.

However, if Sprint, CTIA, and WIA are concerned with fees that are “fair and reasonable” and want these fees disclosed across the board; are the major corporations (like Sprint) willing to disclose the prices they pay to their consultants that advise them regarding paying fees to Tribes; the Tower Construction Notification System (TCNS), and/or Tribal issues? For parities sake, if these fees were disclosed, perhaps the tribes (and states and local municipalities) that charge fees could get a better idea an understanding of a fair and reasonable price?

We absolutely encourage fees that are “fair and reasonable” especially when it comes to tribes using the TCNS. However, the Sprint Corporation, as evidenced by their comments directed at Tribes has made the egregious mistake of categorizing all tribes in the same manner. In this case, Sprint Corporation would have us believe that “one bad apple spoils the whole bunch” which simply is not the case. Perhaps their consultants and contractors could have better explained in detail that each tribal government is unique in how it operates; each tribe also *possesses a special expertise* related to its history (that a consultant or contractor doesn’t have), and that each has a unique government-to-government relationship with the Federal government.

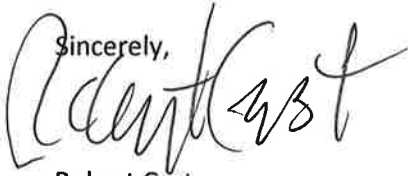
In closing, Sprint Corporation in regard to the Notice of Proposed Rulemaking (NPRM) tells FCC that “it must ask the tough questions about the benefits of the current process: How many times has the TCNS consultation process led to a determination of an adverse effect on an eligible Historic Property? That is the numerator. And the denominator is ‘How many times has a tribe requested consultation through TCNS? And received a fee?’” We believe that these are the very reasons that the system is working to a great extent. The alternatives could have been disastrous for the industry (and deployment in general of wireless communications) if tribes were not involved in the process and let the industry put up towers anywhere they wanted...many important historic properties would have been impacted.

There was a time in the past when NEPA/Section 106 requests inundated tribal offices. There was no FCC oversight. Major companies simply demanded that the tribes check a box stating that their project would have no effect on any sites of traditional religious or cultural significance to the tribe. The tribes were given a very brief window of opportunity to even respond (sometimes only a week) to a request. The companies provided no maps or locational information related to the project, no information regarding previous archeological surveys, no evidence of any environmental studies, and *no tribal fees were paid*. Thousands of cell towers were built during this time and it was only with

numerous meetings between FCC and tribes that a FCC/USET Best Practices protocol began to be developed. Does WIA, CTIA, and Sprint remember these times?

We look forward to working with the FCC, Tribes, the States, and Industry to come to reasonable and workable solutions regarding the advancement of 5G technologies. Our office greatly depends on wireless technologies as it directly affects the use of our Geographic Information Systems and the daily work we do for the Choctaw Nation government and our tribal members.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Cast", written over the word "Sincerely,".

Robert Cast

Tribal Archaeologist

Choctaw Nation of Oklahoma